Testing the Constitutionality of A Peace-Time Draft, P. 2

Words to Be Engraved on Stuffed Shirts, Bald Pates and Nixon's Attorney General

"A society that hates its young people has no future."

—Fred Dutton, the only member of the University of California's Board of Regents to side with the students, the street people and Berkeley's "People's Park", to Nicholas von Hoffman, the Washington Post's *newest and most perceptive columnist, June 2. "I see the older society," Dutton told him, "beating up kids for no reason at all."*

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Midway To A Nguyen Van Nixon Era

Two decades ago Karl Mundt and Richard Nixon were comrades in arms on the House Un-American Activities Committee. Long before Joe McCarthy, they were our foremost practitioners of McCarthyism. When Nixon said at Beadle State College in South Dakota on his way to Midway, "In public life, we have seen reputations destroyed by smear . . . We have heard . . . sly voices of malice, twisting facts" he was providing a perfect description of their own activities in those years. A satirist, seeking savagely to caricature America, could not have done better than Nixon preaching the virtues of a free society at a ceremony dedicating a library named for Mundt. The only time Mundt ever came close to a book was to see whether or not it might have been written by a Red. Their main achievement was the creation, for the first time in our history, of an official agency designed to police public thinking. Their Mundt-Nixon bill, fathered up a dark alley by the U.S. Chamber of Commerce, was fought as unconstitutional by conservative leaders of the American bar and opposed by Tom Clark, then Attorney General. It was vetoed by President Truman as an attempt at "thought control."

The Old Nixon Still Here

Thanks to the anti-Red hysteria which marked the early months of the Korean war, Congress passed it over his veto. It created a Subversive Activities Control Board — the very name is redolent of Inquisition rather than free society — but Supreme Court decisions have left it an empty shell. It was supposed to set up a blacklist of Reds, to force them to put a Scarlet Letter label on their publications and broadcasts, and to deny them the right to travel abroad. All these efforts have been struck down as unconstitutional. The SACB is a ghostly reminder of the Fascistic ideas which were written into American law under the guise of fighting Communism. Mundt and Nixon were a long way from Jefferson in those years. There is little reason to believe them much closer today, when Nixon has appointed three heroes of the witch-hunters to key posts: Burger, the defender of "faceless informer" testimony, to be Chief Justice; Roger Robb, the prosecutor of J. Robert Oppenheimer, to the Court of Appeals for the District of Columbia; and Otto Otepka, the pet State Department stoolpigeon of Congressional Inquisitors like Eastland, to a $36,000 a year job on the Subversive Activities Control Board. It may be no accident that Nixon's little lecture on freedom never once mentioned the Bill of Rights.

We Still Want A Saigon Under Our Control

"If we have in mind to create a Vietnamese government headed by the two Generals, and to support them as our sort of representatives there — I don't like to use the word puppet, it is a prejorative word — but in any case the idea that they are our friends and we are going to keep them in power by giving them an unlimited amount of support and weapons — of course, you would get no political settlement. And to withdraw 50,000 troops as just sort of a guise of making progress, but to make no change in our attitude toward what we are going to leave there will not result in a settlement . . . I do not believe it is in the national interest of the United States to maintain a base in South Vietnam whether it be directly under our occupation or whether it be by proxy . . . The actions would indicate to me that we are planning to continue to control South Vietnam by proxy. Obviously Mr. Thieu does not want any change in the status quo; he wants us to stay right there with our troops and pay all the bills."

—Sen. Fulbright before the Proxmire committee hearings on "The Military Budget and National Economic Priorities." Fulbright made a magnificent witness. June 4.

Nixon had to find a very out-of-the-way college to get away with a commencement address which claimed for itself "the honesty of straight talk" without saying a word about the war. He also had to be a long way from nowhere to get away with his description of black demands for open admission to such schools at New York's City College. "Instead of seeking to raise lagging students up to meet the college standards," Nixon said, "the cry now is to lower the standards to meet the students. This is the old familiar self-indulgent cry for the easy way." This was extraordinarily insensitive. Whatever its merits, the demand for open enrollment for graduates of ghetto high schools is hardly a form of self-indulgence. On the contrary it reflects the desire of the blacks fortunate enough to be in college to open the doors wider to the less fortunate, and to force better teaching in ghetto high schools. The C.C.N.Y. proposals, for example, are only a more modest variant of the open enrollment to all high school graduates which exists in many State colleges.* It was unfair so to

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NIXON'S AIR FORCE ACADEMY SPEECH makes the fight against the draft more urgent. One way to prevent an attempt at a Pax Americana is to deny the government the right to conscript soldiers in peace-time. This question, as Mr. Justice Douglas pointed out in a comprehensive dissent in a conscientious objector case last year (*Holmes v. U.S.* 391 U.S. 936), has never been decided by the Supreme Court. Significantly Mr. Justice Stewart, who wrote the Court's opinion denying a hearing in that case said he would have voted with Douglas if it had involved "the power, in the absence of a declaration of war, to compel military service in armed international conflict overseas." This augurs well for the test case which the American Civil Liberties Union has just filed in New York on behalf of David Peter Zimmerman, who refused induction and challenged a peace-time draft as unconstitutional. The ACLU's 172-page brief by Leon Friedman and others in support of its motion to dismiss is a monumental work of legal and historical scholarship.

From 1789 to 1940, the draft had been used for only four years, once in the Civil War and again in World War I. In World War I, it is timely to recall, it was used not only to raise troops but to repress criticism; critics of the war went to jail for "obstructing the draft." Our first peace-time draft law was passed in 1940, on the assurance of its sponsors that it was not to be a "permanent policy." It has been with us ever since. The new Chief Justice is advertised as a "strict constructionist." The ACLU brief shows that, strictly construed, the Constitution provides no basis for a draft, even in war-time. The brief quotes from the debates on the Constitution remarks by Madison, its principal framer, which are remarkably apposite today. "The means of defense against foreign danger," Madison said, "have always been the instruments of tyranny at home . . . Throughout all Europe the armies kept up under the pretext of defending have enslaved the people."

IF "STRICT CONSTRUCTION" were a real concern, the Senate Judiciary Committee would have have grilled Burger sharply on one item in his past to which Drew Pearson's *Merry-Go-Round* called attention (April 5, 1955). Burger, then an Assistant Attorney General, invited 12 newsmen to an off-the-record lunch to build up public support for the "faceless informer" case he was about to argue in the Supreme Court. The ethics of this effort to argue the case out of court is questionable, and the point itself is fundamental. What could be more basic than the right to face one's accusers? Burger told the newsmen the attack on "faceless informers" was Communist-inspired. The Court held against him. We hope the precedent is not reversed some day by a new Nixon majority. Senators Nelson, Young (Ohio) and McCarthy deserve applause for voting against confirmation, and Fulbright for abstaining.

The Case For Nationalizing Arms Industry

"Where a corporation does all (or nearly all) of its business with the Dept. of Defense; uses much plant owned by the government; gets its working capital in the form of progress payments from the government; does not need to worry about competitors for it is the sole source of supply . . . only the remarkable flexibility of the English language allows us to call it private enterprise . . . General Dynamics, Lockheed, North-American Rockwell and such are public extensions of the bureaucracy . . . Perhaps one day soon a further step should be taken. Perhaps any firm which, over a 5-year period, has done more than 75% of its business with the Defense Dept., should be made a full public corporation . . . The action would ensure that such firms are held to strict standards of public responsibility in their political and other activities."

—John Kenneth Galbraith to the Proxmire committee June 3. Text in Con. Rec. June 5 p. S 6305.

FROM 1964 UNTIL HIS ASSASSINATION last year, Martin Luther King's telephone was tapped by the FBI. This revelation in the Cassius Clay trial was followed a few days later by a Justice Department statement claiming that J. Edgar Hoover told the truth when he testified annually in the House appropriations hearings 1965-68 that all such taps were authorized in advance and in writing by the Attorney General. This has now been denied by former Attorney General Ramsey Clark in an interview with the *Los Angeles Times* (*Washington Post,* June 8). Mr. Clark denied ever authorizing taps either of Dr. King or of Elijah Muhammed, leader of the Black Muslims. He called the implication that Dr. King was a security risk "outrageous." Hoover hated King, and leaked

The Man and The Regime We Support in Saigon in The Name of Self-Determination

"Saigon, June 1—A broad spectrum of South Vietnamese politicians believe that the present government of President Thieu is too weak, too narrow, too inept and too corrupt to compete successfully for power with the National Liberation Front. Aside from the U.S. mission and Thieu's close military allies, the prevailing political mood ranges from deep anxiety to outright pessimism. Interviews with the most important political parties, fronts and religious blocs did not turn up a single individual who believed that the present Thieu government could win in any reasonably fair and open political competition with the Communists . . . The pervading negative feeling over the Thieu government is surprising, for it includes political leaders who have recently joined his new ruling alliance.

"There is agreement that the government is supported on much too narrow a political base, that it has no real ties with the majority of peasants in the countryside and the growing number of workers and restless urbanites . . . No one gives credit to the government for any serious effort to stop corruption. Top military leaders in general are singled out as the group committing the worst violations. There is indignation over the belief that these military figures are the most 'untouchable' in the government . . . The pessimists . . . claim that many officials, particularly the military, are grabbing money now to build up reserves or get out of the country.

"They believe that President Thieu is permanently marred because he fought for the French, the Diem regime and then for the Americans. These politicians, largely from or tied to such groups as the Buddhists, the Cao Dai, the Hoa Hao and southern-centered, are outspoken in their view that a northerner, a Catholic and a former French ally, such as Thieu, can never gain the support of South Vietnam's vast peasantry . . . They simply do not regard him as a real nationalist . . . Almost all are highly critical of the 1967 elections which brought Thieu to power. They regard them as an exercise for the benefit of American public opinion . . . a 'farce' or something close to it."

—Peter J. Kumpa in the Baltimore Sun *June 2. Kumpa is a correspondent of long experience in Southeast Asia.*

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slanderous stories about him. But I doubt if there is a single person in Congress with the courage to call him to account. The U.S. suffers from its own "cult of personality" and the FBI chief is a law unto himself.

EVERY WESTERN INTELLECTUAL who has been friendly to the Soviet Union owes an obligation to protest the steady reversion to Stalinism in that unhappy land. I want to call attention to an interview in the London *Sunday Times* (May 25) with Anatole Shub, who has just been expelled as the *Washington Post* correspondent in Moscow. He disclosed that Larissa Daniel, wife of the dissenting writer, himself in a detention camp since 1966, is being subjected to barbarous treatment in a Siberian labor camp about 150 miles west of Bratsk. Her health is threatened by the heavy timber work to which this frail woman has been assigned. Her crime is that she and half a dozen others had the courage to demonstrate against the Soviet invasion of Czechoslovakia. Ten brave intellectuals have just appealed to the World Communist conference in Moscow against the increasing number of dissenters being punished by incarceration in insane asylums. Write a letter, boycott a reception, insult the next Soviet bureaucrat you meet. Do *something*. Russia is becoming a prison again.

ADD CONGLOMERATES: Wm. W. Hancock, former Deputy General Counsel of the Air Force, has just been named General Counsel of the U.S. Arms Control and Disarmament Agency. Why not move the ACDA over to the Pentagon altogether? IN A POLL of its 80,000 scientists and engineer readers, *Industrial Research* (May) asked whether "there is any 'ultimate' ABM system capable of complete protection?" 89% replied "No." The magazine itself in its April issue came out against the ABM calling it "obsolete and unnecessary" and declaring it "could initiate a new arms race." Is THIS JOURNALISM DEPT? When 9 Senators and 36 Representatives issued a joint report warning against the "increasing militarization of our society", most papers (June 2) put the story on page one, but the *New York Times* that day led the front page with a piece of puffery, "Pentagon Moving to Reduce Waste in Arms Projects." It contained no hard news and was no better than a public relations ploy to blanket the Congressional protest which was relegated to page 19.

Unexpected Testimonial to SDS

Mr. Edwards (D. La. former chairman of HUAC)— What is the effect, good or bad, on the other students . . . of SDS on the campus?

Mr. (Thos. M.) Sneeringer (a Junior at Georgetown, who prepared a report on SDS for the Committee) . . . More cognizance of . . . the oppression of the lower classes . . . A growing proportion of the student body is becoming activated . . . They do agree when the SDS says something is wrong here.

Mr. Edwards — Do you think a majority of the students at Georgetown think there is something sick or wrong with our society?

Mr. Sneeringer — Maybe "sick" isn't the right word, but you can't help but think there is something wrong when you see there are ghettoes . . . The effect of SDS is to have students become more aware of these deficiencies.

Mr. Edwards — . . . as a result of these hearings I have been shocked out of complacency. A fellow like (Barry) Rubin (an SDS leader at Georgetown) talking to you, I thought, would end up with "here is a radical nut that doesn't understand or appreciate my country." I was sailing through my peaceful existence thinking 98 percent of the students know better than that, and that the two percent should be kept from hurting anybody. They are so out of line . . . that the rest of the good guys will put them in their place before long. Apparently I am in error.

—House Internal Security hearing on SDS June 5.

NEW PITY-THE-POOR PENTAGON LINE: The *Washington Post* said in an editorial May 30 that current onslaughts on the military were "uncomfortably reminescent of Joe McCarthy's sly attacks on the State Department." The parallel would fit if a new demagogue were accusing the Joint Chiefs of being infiltrated by pacifists. When that day comes, we'll be happy to leap to their defense.

PAGING SUETONIUS: Nixon, according to a Society Page item (*Washington Post,* June 8) plans to cut up the cork flooring in the White House where Eisenhower left cleat marks from his golf shoes, and give the pieces out as souvenirs. Whether they "will be framed behind glass or simply be sent out in gift boxes has not been decided." We hope somebody is saving Nixon's toe-nail parings for posterity.

How the Pentagon's Drive Toward First Strike Capacity May Escalate the Arms Race

Sen. SYMINGTON — If Secretary Laird says that this Poseidon development could "improve significantly the accuracy of the Poseidon missile, thus enhancing its effectiveness against hard targets [like missile bases] does that not imply if it does not actually state, that the U.S. is going after a first-strike capability?

Mr. SCHULTZE (former U.S. Budget Director)— . . . clearly this does pose in Soviet eyes the possibility of taking them out preemptively. Now I find it impossible to believe that any sane man deliberately would build a first strike capability . . . The real problem is the other guy has got to assume once you have the capability he has to prepare against it . . . Continually advancing technology and the risk aversion of military planners combine to produce ever more complex and expensive weapon systems and ever more contingencies to guard against. Let me give some examples.

According to Dr. Foster, Deputy Director of Defense Research and Engineering in testimony before the Senate Armed Services Committee last year, the Poseidon missile system was originally designed to penetrate the Soviet TALLINN system — a system originally thought to be a widespread ABM defense. When this system turned out to be an anti-aircraft system, the deployment decision on Poseidon was not revised . . . The sequence went like this: (1) The Poseidon decision was made against a threat which never materialized; (2) . . . Poseidon was continued, presumably as a hedge against other potential threats, including faster-than-expected Soviet deployment of the SS-9; (3) but now a decision has been made to hedge against the SS-9 by building a 'hard-point' ABM — so we are presumably building the Poseidon as a hedge against a number of possible Soviet threats, including the SS-9, and then building a hedge on top of that; (4) finally new technology has made it possible to design a hard target killing accuracy [i.e. to use it as a first strike weapon against Soviet ICBMS-IFS] — an accuracy not needed to preserve our second strike capability against the SS-9 or a Soviet ABM . . . The existence of that capability may well force a major Soviet response.

—Proxmire Hearings on The Military Budget June 3.

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Little Hope of Arms Control If Nixon Pursues A Pax Americana

(Continued From Page One)

misrepresent black demands in that far away lily-white forum. If "passionate concern," as Nixon said, "gets nowhere without dispassionate analysis", it was his obligation to speak soberly of his own plans for higher education. But that would have gotten him back to the war, and the whole web of lies would come apart if one strand were treated honestly.

A Billy Graham With Brass Knuckles

Nixon's commencement address next day at the Air Force Academy was another example of his tendency to sound like Billy Graham while practising the below-the-belt in-fighting he perfected in the House of Representatives. The real issues now raising a storm in Congress over military spending and military power cannot be seriously discussed with a man who talks of "unilateral disarmers" and "neo-isolationists." This is the old smear-and-run tactics of the old Nixon. The speech was low demagogy, full of non-sequiturs and floosy historical analogies. But what it said is clear enough. Nixon is determined to pursue the course of the Pax Americana. This means no reduction in military spending or military power, and it reveals, as in a lightning flash, how illusory it is to expect any move toward disarmament from this Administration. He speaks rather of "control of arms" and only "in the context of other specific moves to reduce tension around the world." That is the old Dulles dream of forcing political concessions as the price of arms negotiations.

The Air Force speech is the best key to the charade on Midway Island. A President who believes that the U.S. must be the world's policeman is headed for more Vietnams, and is unlikely (as he said) to accept a "disguised defeat" in getting out of this one. The token withdrawal, which may prove to be largely support or kitchen troops, is aimed to appease and mislead opinion at home. The best guide to the realities lies in the astringent comments of the two Senators closest to the military. Russell said the withdrawal of 25,000 men "is of no great significance" and "will not substantially reduce American casualties." Stennis said he had no "high hopes" that the South Vietnamese army would soon be able to take over the war. If Nixon has his way we may keep troops in Vietnam indefinitely as we have in Korea and Western Europe to man "the frontiers of freedom."

This is the meaning of Pax Americana and if it leads to unrest at home, he is ready for it. "We have the power to strike back as need be," he said at Beadle State. "The nation has suffered other attempts at insurrection." Though he proclaims an era of negotiation abroad, he is preparing for confrontation at home. That helicopter spraying 50 pounds of CS gas indiscriminately over campus demonstrators, nearby elementary schools and hospital facilities in the Berkeley Peoples' Park clash may be a preview of what can be expected elsewhere. Reagan, the National Guard and the police treated fellow Americans with the mindless and mechanical brutality we mete out in Vietnam. We are beginning to repeat here all the errors we made there. Nixon is as little responsive to his opposition as Thieu is to his. Thieu returned from Midway so emboldened that he held a press conference threatening that anyone who even advocated a coalition with the NLF would be "severely punished." Instead of spreading freedom to Vietnam, Nixon may soon be reducing it here. Instead of de-Americanizing the war, we are beginning to Vietnamize America. We may be moving toward a Nguyen Van Nixon era, combining the worst of both regimes. *June 9*

On Reagan — Conqueror of the Peoples Park

"Episcopal Bishop C. Kilmer Myers described Governor Ronald Reagan yesterday as 'the one who has unleashed the dogs of war in Berkeley . . . a full scale military operation replete with strong-armed and brutal methods which I as a student observed in Germany in 1939.' . . . 'It is no longer sufficient to say that the police and the military have "over-reacted." The charge of violation of the law, both civil and moral, must be laid at their feet rather than at the feet of the helpless. We remember that this is the same Governor who advocated paving over of Vietnam. He is a warmonger in Southeast Asia and he is a warmonger in California. The system of violence which spawns persons like the Governor of California is all of one piece.'"

—San Francisco Chronicle *May 26.*

***Including, as I learned by phone, Beadle State itself.**

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